

Aviko B.V. Nederland

P.O. Box 8
7220 AA Steenderen
The Netherlands



General Technical Purchase Conditions for Services, Systems and Components



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1. GENERAL

1.1. Definitions

Purchase Price:	The total amount, exclusive of VAT, for which the Contractor will perform the Delivery in accordance with the Agreement.
General Terms and Conditions:	These general technical purchase conditions for Deliveries by the Client.
Specifications:	The Client's description of the Delivery or related contract variations, including the applicable administrative, legal and technical provisions, materials and terms and conditions of performance, which forms a part of the Agreement, including any changes and these General Terms and Conditions.
Services:	The services to be provided by the Contractor as set out in the Agreement.
FAT:	The Factory Acceptance Test conducted by the Client.
System:	The goods to be delivered or delivered by the Contractor, goods resulting from the Services including components thereof, as set out in the Agreement.
Delivery:	Delivery of the System and/or Services by the Contractor, including but not limited to transport and, if applicable, installation, commissioning and trial run.
Machinery Directive:	Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 concerning machinery and amendment of Directive 95/16/EC, as well as any legislation in implementation and replacement thereof.
Offer:	The Contractor's offer in reply to the Specifications.
Subcontractor:	The natural person or legal entity that performs part of the Delivery on the instruction of the Contractor.
Confirmation of Instruction:	The acceptance and signing of the Instruction by the Contractor.
Contractor:	The natural person or legal entity with whom the Client has concluded the Agreement.
Completion Date:	The agreed date on which Completion is expected to take place.
Completion:	The acceptance of Delivery by the Client.
Completion Period:	The agreed period between the date on which the Agreement is concluded and the Completion Date.
Client:	Aviko B.V. or any company that is affiliated with Aviko B.V and which forms a part of the Royal Cosun group.
Agreement:	The agreement between the Client and the Contractor with regard to the System and/or Services and the Delivery, as submitted by the Client to the Contractor when giving instructions, and which is accepted by the Contractor by means



of a Confirmation of Instruction, which may consist of the Specifications, the Offer, other arrangements in writing and of which the General Terms and Conditions always form full part.

- Force Majeure:** Every event beyond the control of a party, which could not have been foreseen nor prevented and which results in the complete inability to perform the Agreement or a part thereof. Force Majeure on the part of the Contractor is, in any case, not taken to include: a lack of staff, strikes, a breach of contract by third parties hired by the Contractor, transport issues on the part of the Contractor or third parties hired by the Contractor, the failure of auxiliary materials, liquidity or solvency issues on the part of the Contractor and government measures taken against the Contractor.
- SAT:** The Site Acceptance Test as further described in articles 3.2.4.3 and 3.2.4.4.
- HS Coordinator:** The Health & Safety Coordinator of the Client or another expert appointed by the Client to fulfil the role of HS Coordinator.
- Confidential Information:** All information of one party, either written or verbal and of whatever nature, disclosed to the other party in the context of the Agreement and which is earmarked as confidential by the disclosing party or which can reasonably be regarded as confidential, as well as all other information in relation to the activities, affairs, customers, products, developments, corporate and manufacturing secrets, know-how, affiliated and associated companies of the disclosing party and employees of and third parties engaged by the disclosing party, yet with the exception of all information:
- (i) that is made public without violating the provisions of the Agreement;
 - (ii) that was lawfully obtained from a third party who is not bound by a duty of confidentiality;
 - (iii) that has to be disclosed by one of the parties within the framework of dispute settlement rules, arbitration or legal proceedings or court judgement, or in accordance with an act, decree or regulations; or
 - (iv) that is developed or discovered by the receiving party completely independently,
- provided the receiving party reports and proves the applicability of such an exception to the disclosing party.
- Work Site:** The location where the Delivery is made, as well as the site that is made available for site huts and interim storage.



1.2. Scope of application

- 1.2.1. The Client will provide the initial Specifications to potential contractors only - and without obligation - by way of an invitation to submit an Offer and they do not bind the Client in any way.
- 1.2.2. The Contractor will send the Confirmation of Instruction to the Client within ten (10) calendar days of receiving written instructions from the Client, failing which the Client reserves the right to regard the aforementioned instructions as non-existent.
- 1.2.3. The Agreement is formed when the Client takes cognizance of the Confirmation of Instruction.
- 1.2.4. The Agreement is exclusively subject to these General Terms and Conditions, regardless of whether the Contractor has provided his own general terms and conditions or made them known in another way.
- 1.2.5. In the event of a conflict, ambiguity or conflict between a provision of the Specifications and these General Terms and Conditions, the Specifications prevail over these General Terms and Conditions.
- 1.2.6. Changes and additions to these General Terms and Conditions are valid only when they are explicitly agreed on in writing in the Agreement.

1.3. General regulations

- 1.3.1. The Delivery has to comply with all applicable legislation, regulations and requirements that can be reasonably stipulated in accordance with the latest state of the art, including but not limited to the Machinery Directive.
- 1.3.2. Subject to explicit other agreements or following from mandatory statutory provisions, all obligations of the Contractor are deemed to be result obligations.
- 1.3.3. The Contractor is obliged to fully cooperate in order to achieve a good technical and safe unit that forms a part of the Client's other systems that do not form a part of the Delivery.
- 1.3.4. If the Contractor discovers any faults in the systems that do not form a part of the Delivery, he has to notify the Client immediately.
- 1.3.5. If during the Completion Period, any legislation, regulations, requirements or the interpretation thereof with regard to the Delivery change and such change were to have any impact on the Delivery, the Contractor, before changing the Delivery accordingly, will submit a relevant proposal to the Client for approval, along with an overview of the costs involved, and the consequences for the Completion Period. The Client is obliged to reimburse only the costs that have been documented and approved correctly and which relate to the changes referred to in this article that were not foreseen or could not reasonably have been foreseen on the date the Agreement was concluded.
- 1.3.6. If any part of the Delivery is subject to checks and/or inspections by or on behalf of the authorities, such checks are conducted at the risk and expense of the Contractor and the part in question will be accepted only when the Contractor proves that he has obtained the approval from the relevant government body. Changes and improvements deemed



necessary by said government body will be implemented by the Contractor at his own expense.

1.4. Subcontractors

- 1.4.1. The Contractor can only engage a Subcontractor with the prior written approval from the Client.
- 1.4.2. In any case, towards the Client, the Contractor remains exclusively responsible for full compliance with and the performance of the Agreement.
- 1.4.3. The Contractor has to ensure that the Subcontractors are aware of all (contractual, statutorily or otherwise applicable) aspects that are relevant to the performance of the Delivery.
- 1.4.4. The Contractor has to ensure that the Delivery is coordinated well and he has to notify the Client in advance if the Subcontractors need to access the Work Site of the Client.
- 1.4.5. The Client is at all times entitled to demand that the Contractor proves that he has properly coordinated the conditions and obligations from the Agreement with his own Subcontractors and suppliers. The parties acknowledge that the Client is not obliged to request such proof and that the Contractor cannot derive any rights from this right not being exercised.
- 1.4.6. The provisions in the sub-contracting agreements cannot in any way be enforced against the Client who, subject to contrary legal stipulations under mandatory law, has no legal relationship with Subcontractors whatsoever nor acknowledges any.

1.5. Transfer of ownership and risk

- 1.5.1. Ownership of the System transfers to the Client immediately after the transport as referred to in article 3.1 has taken place and the System and/or parts have been delivered, without the possibility for the Contractor to demand a retention of title.
- 1.5.2. Without prejudice to Article 1.5.1, the Contractor bears the costs and risks of the damage to, loss or destruction of the Delivery up to the Completion Date.
- 1.5.3. The Contractor ensures that the System can be identified as the property of the Client and that the System is sufficiently packed, stored, secured and insured.
- 1.5.4. From the moment of transfer of ownership as referred to in Article 1.5.1, the Client is entitled to use and/or process all goods that form a part of the Delivery if such processes form a part of the normal and regular operations of his business.

1.6. Liability and indemnity

- 1.6.1. The Contractor undertakes to reimburse and indemnify the Client and his employees and third parties engaged by him, without limitation, against (i) all costs, losses and other direct and indirect damage incurred and suffered by them, including but not limited to damage to the Work Site and property of the Client, and (ii) all demands for compensation, liabilities, expenditure, legal demands or fines of whatever nature addressed to them, caused by or connected to the Contractor's performance of the Agreement.
- 1.6.2. Article 1.6.1 applies in full if any such damage or demand follows from or is connected with actions by a Subcontractor or an employee of a Subcontractor, for which the Contractor



remains fully and exclusively liable towards the Client and his employees and third parties engaged by him.

- 1.6.3. The Client cannot be held liable for any direct or indirect damage.
- 1.6.4. Nothing from the Agreement can be regarded as an exclusion or limitation of the liability of a party with regard to:
 - the intent of a manager, gross negligence of a manager, intentional errors by a manager, fraud or deceit;
 - personal injury or death.

1.7. Confidentiality

- 1.7.1. Each of the parties acknowledges that by performing the Agreement, he has access to Confidential Information of the other party and he undertakes, both during the term of the Agreement and after termination thereof and subject to the prior written permission from the other (disclosing) party, (i) not to disclose, distribute, reproduce or use Confidential Information of the other party for purposes other than the correct performance of the Agreement, (ii) to strictly limit the distribution of Confidential Information of the other party to individuals who need it for the correct performance of the Agreement, and (iii) to take all necessary and appropriate measures in order to effectively protect the Confidential Information of the other party against loss and disclosure to third parties.
- 1.7.2. Each of the parties undertakes to immediately notify the other party in writing as soon as he is aware of or suspects loss of and/or unauthorised access to Confidential Information of the other (disclosing) party.
- 1.7.3. The Contractor undertakes and promises to the Client that these duties of confidentiality will also be observed and ensured by his employees and third parties engaged by him and any Subcontractors.
- 1.7.4. Each of the parties acknowledges that the aforementioned duty of confidentiality forms a vital part of the Agreement and that non-compliance thereof gives the other party the right, by operation of law and without legal intervention, to demand a fixed amount in compensation from the receiving party to the extent of 0.5% of the Purchase Price, subject to a minimum of EUR 50,000. The parties acknowledge that this fixed amount represents a reasonable indemnification of the foreseeable damage of the disclosing party and that it can never be regarded as excessive. It applies without affecting the disclosing party's right to claim compensation for any higher damage he may actually suffer.

1.8. Intellectual property rights

- 1.8.1. All intellectual property rights (including but not limited to copyrights, personality rights, database rights, rights with regard to non-public know-how, neighbouring rights, patent rights, trademark rights and design rights), as well as all similar rights and applications with regard to all aforementioned rights that can or will be exercised with regard to the Delivery, at any time and place, will be transferred by the Contractor to the Client, who accepts this, insofar as it concerns a component of the Delivery manufactured specifically for the Client either under the management or supervision of the Client or with the use of Confidential Information of the Client's. These rights are all rights that guarantee the good functioning of the system and guaranteed and permanent access to the data by the Client, regardless of the term of the Agreement. This transfer of the rights referred to in this article constitutes the unrestricted right to exercise all property rights, including the reproduction right and the right



to notify third parties. The Client will at all times be the titleholder of all database rights (in terms of both structure and contents).

- 1.8.2. For the intellectual property rights with regard to the Delivery or the System that do not fall within the scope of applicability of this Article 1.8.1, the Contractor grants the Client a non-exclusive, irrevocable, sub-licensable, global and transferable user and operating right in the broadest sense of the word, for the statutory term of protection of the intellectual property rights in question.
- 1.8.3. If the transfer or licence determined in Articles 1.8.1 and 1.8.2 or the opposability thereof require or indicate a document or registration, the Contractor hereby grants the Client explicit and irrevocable authority to draw up and sign such a document or registration on behalf of the Contractor, without prejudice to the Contractor's obligation to unconditionally and on the Client's demand cooperate in such a transfer or registration.
- 1.8.4. In the event of a difference of opinion between the parties whether or not intellectual property rights fall within the scope of application of Article 1.8.1, it is assumed those rights accrue to the Client, subject to proof to the contrary. The outcome of that dispute will not negatively affect the Client's user rights.
- 1.8.5. The Contractor indemnifies the Client against third-party claims that any component of the Delivery or the use thereof by the Client infringes third-party intellectual property rights, including, among other things, claims with regard to non-public know-how and corporate secrets and illegal competition. On the Client's demand, the Contractor will take on the defence in any proceedings brought against the Client in connection with the alleged infringement. The Contractor indemnifies the Client against all damage and costs incurred by the Client as a result of such a claim, including, among other things, the costs of legal aid for the Client (whether or not during legal proceedings, mediation or arbitration), including the reasonable lawyer's fees incurred by the Client. Under no circumstance will the Contractor reach an amicable settlement or compromise with a third party without prior written permission from the Client, failing which the Contractor will be fully liable for all financial, economic and legal consequences of such an amicable settlement or compromise.
- 1.8.6. In the event of an alleged infringement of third-party intellectual property rights, the Contractor will, at his expense, take all measures that may contribute to preventing stagnation of the Client's operations and to reducing any costs to be incurred and/or damage to be suffered by the Client as a result of that.
- 1.8.7. Without prejudice to the provisions of Articles 1.8.4 and 1.8.5 and the ensuing rights, the Client can, if a third party starts legal proceedings against him with regard to an infringement of intellectual property rights as a result of the Delivery or the use thereof, fully or partially dissolve the Agreement out of court at the expense of the Contractor, subject to a written notification. Such a dissolution will not be effected until the Client has given the Contractor a reasonable term, given the circumstances, to refute the infringement with arguments and the Client subsequently decides that the risk of negative consequences is so high that he cannot reasonably be expected to continue the Agreement.
- 1.8.8. The Contractor explicitly confirms and guarantees that he is authorised to grant the rights referred to in this Article 1.8 and that they are not encumbered with third-party rights, subject to explicit contrary provisions of the Agreement.
- 1.8.9. The Contractor's use of open-source or free software for the Delivery is subject to the prior approval from the Client, who will determine if the licence or conditions under which this



open-source or free software is made available is compatible with the application of this Article 1.8.

1.9. Spare parts

- 1.9.1. As part of the Offer, the Contractor also has to include an offer for the spare parts referred to in the Specifications and the other spare parts recommend by him, along with specifications and drawings.
- 1.9.2. The Contractor is obliged to keep stocks of spare parts of the delivered System, whether or not within the framework of his warranty obligations, for the usual service life of the delivered System, subject to a minimum period of two (2) years, and to supply these spare parts at the Client's request.
- 1.9.3. During the first two (2) years, the prices of the spare parts are the same as those that apply at the time the Instruction is issued.
- 1.9.4. Spare parts from the Client can be used only in special cases and in consultation with and with the approval from the Client. In such cases, the Contractor will deliver these spare parts again free of charge and as soon as possible within an agreed term.

1.10. Contract variations

- 1.10.1. Contract variations with regard to the Delivery also fall under the provisions of the Agreement and can be undertaken only following a prior written request or approval from the Client.
- 1.10.2. Contract variations must be calculated at the unit prices quoted in the Agreement. Failing that, the System and/or the Services (contract variations) will be calculated at cost price, increased with a general percentage for operational costs, profits and risk of the Contractor (mark-up percentage) which has to be reasonable and competitive and which has to be explicitly mentioned in the substantiated budget (see Article 1.10.3). In the case of work calculated in accordance with an hourly rate, the timesheets must be signed for approval by the Client and duplicates thereof, along with the invoice, must be sent to the Client. Only approved hours will be paid.
- 1.10.3. Either within seven (7) calendar days of receiving Specifications with regard to contract variations or along with his request for contract variations, the Contractor has to provide the Client with an Offer with the following information:
 - 1.10.3.1. a substantiated budget regarding the contract variations;
 - 1.10.3.2. where relevant, modified drawings with a written explanation; and
 - 1.10.3.3. where relevant, an overview of the changed Completion Date.
- 1.10.4. Within fourteen (14) calendar days of receipt of the aforesaid Offer, the Client will or will not issue the Contractor with an instruction for contract variations and the latter, within five (5) calendar days of receipt thereof, will send the Client a Confirmation of Instruction, in the absence of which the Client reserves the right to deem the aforesaid instruction as non-existent.

1.11. Provision of information

- 1.11.1. The Contractor will, no later than the Completion Date and as part of the Delivery, provide the Client with the relevant and applicable documentation (including but not limited to the Machinery Directive) as required by law, unless the Client requests this earlier or when the



Contractor is legally obliged to communicate this to the Client earlier, including but not limited to:

- 1.11.1.1. Technical file consisting of, among other things, descriptions, calculations and drawings, and as required within the framework of the Machinery Directive;
 - 1.11.1.2. Declarations of conformity;
 - 1.11.1.3. Inspection and guarantee certificates;
 - 1.11.1.4. Training manuals concerning the use of the System for staff of the Client;
 - 1.11.1.5. Safety instructions, supported by photographic and/or film material where relevant;
 - 1.11.1.6. Quality plans with related specifications, inspection methods, procedures, method of recording the inspection results, etc. in the Specifications as included in the requirements and/or guidelines;
 - 1.11.1.7. Installation instructions;
 - 1.11.1.8. User instructions; and
 - 1.11.1.9. Maintenance instructions.
- 1.11.2. Parties will in joint consultation decide on the format, the number and the language of the documents referred to in article 1.11.1, which in any case will be provided in the language used at the location where the Work Site is situated.
- 1.11.3. Within six (6) months of Completion, the Contractor will provide the Client with all as-built drawings, as described in the Agreement. In the event of situations which are subject to a safety risk, the relevant documentation, including but not limited to the as-built drawings, must be adapted and supplied straight away.
- 1.11.4. Prior to the commissioning and/or trial run, the Contractor is obliged to timely instruct the employees and third parties engaged by him to be designated by the Client about the construction, working, operation and maintenance of the Delivery, both verbally and in writing.
- 1.11.5. All applicable safety aspects must be clearly documented, through photographic and video material where necessary, and be submitted to the Client and his employees and third parties engaged by him. Taking pictures or video recordings on the Work Site is subject to the prior written permission of the Client. These photographic and video recordings must be made available to the Client immediately after recording. Bringing photographic or video material outside the Work Site is not permitted, unless with the written approval from the Client.

1.12. Tax and contributions

- 1.12.1. All taxes payable in respect of the Delivery and contributions are included in the Purchase Price.
- 1.12.2. The Contractor guarantees the Client compliance with labour legislation, social security legislation and tax legislation with regard to the Delivery, his employees, the Subcontractors and the employees of his Subcontractors.
- 1.12.3. The Contractor is to take all measures, or provide his cooperation to measures the Client deems necessary for, as much as possible, limiting the Client's liability in relation to the



Dutch Collection of State Taxes Act 1990 (Sections 34 and 35): Recipients' liability and vicarious tax liability.

- 1.12.4. The Client, as and when necessary, reserves the right to make deductions from payments to the Contractor and to deposit these withheld amounts into a guarantee account (G Account) as designated by the Contractor, or to deposit them directly with the Dutch Tax and Customs Administration.

1.13. Force Majeure

- 1.13.1. In the event of Force Majeure on the part of a party, this party will immediately and comprehensively inform the other party thereof, including the exact cause and estimate of the duration, and the performance of the Agreement will be fully or partially suspended for the duration of the Force Majeure, without the parties being obliged to pay each other any compensation in this regard for this reason.
- 1.13.2. The party affected by Force Majeure will bear its own costs arising from the Force Majeure and, as much as reasonably possible, take all necessary measures and assist the other party and any third parties in order to minimise the impact of the Force Majeure.
- 1.13.3. If the Force Majeure continues for more than forty-eight (48) hours, or if it is already certain that the Force Majeure will reasonably last more than forty-eight (48) hours, the parties will consult each other in good faith in order to agree on a new planning and Completion Period. If the parties, even after the escalation procedure in accordance with Article 11.8, are unable to reach an agreement, both the Client and the Contractor have the right to dissolve the Agreement by means of a written notification, with immediate effect and without judicial intervention and without this giving rise to any right to compensation from the other party.
- 1.13.4. The Client is, in any case, without being exhaustive, does not owe the Subcontractors any compensation in relation to the Force Majeure, including but not limited to reimbursement of additional costs of equipment and auxiliary materials.

1.14. Working hours on the Work Site

Working hours for the staff of the Contractor and/or his Subcontractor(s), insofar as the work is performed on a Work Site of the Client, are equal to those that apply to the staff of the



Client. In the event that the Contractor wishes to perform the work during other hours, the parties will consult each other and in all reasonableness make arrangements to that end.

1.15. Compliance with legislation and (safety) regulations of the Client

1.15.1. The Contractor undertakes and guarantees that a Subcontractor will at all times comply with the provisions and procedures provided for in the Agreement and applicable relevant legislation, where applicable, including but not limited to:

- 1.15.1.1. The Machinery Directive;
- 1.15.1.2. The Dutch Working Conditions Act;
- 1.15.1.3. Legislation concerning materials that come into contact with foodstuffs;
- 1.15.1.4. Legislation concerning pressure equipment;
- 1.15.1.5. Legislation concerning ATEX (*ATmosphères EXplosibles*).

1.15.2. Recipients' liability and vicarious tax liability (Dutch Collection of State Taxes Act, Sections 34 and 35).

In the event the Client is held jointly and severally liable, under Sections 34 or 35, for income tax, national insurance contributions and turnover tax, the Client, in turn, will be able to hold the Contractor jointly and severally liable for income tax, national insurance contributions and turnover tax the Client has been forced to pay in this way.

On the Client's demand, the Contractor will immediately submit a written statement from a qualified registered accountant (or equivalent foreign title) of a reputable international audit firm of good report, showing irrevocably and without any reservation that the Contractor and, insofar as applicable, Subcontractors, comply and have complied with the applicable legislation.

The Client is entitled to terminate the Agreement with immediate effect, without judicial intervention and without a prior notice of default and without being obliged to pay compensation or any other form of damages, if the Client receives information that employees of the Contractor (or his Subcontractors) are being underpaid and this is not remedied within a reasonable period of time.

The Contractor indemnifies the Client against all damages and costs arising from claims of the Contractor's employees (or his Subcontractors) based on late or non-fulfilment by the Contractor (or his Subcontractors) of obligations under this Agreement. The aforesaid damages and costs, in any case, include but are not limited to any back pay due, costs of legal assistance, judicial and extrajudicial costs.

On the Client's demand, the Contractor will, at his own expense, cooperate in inspections, audits and any wage validations to be performed by a collective agreement body from within the industry. The Contractor also guarantees that, where relevant, Subcontractors (and, where applicable, other parties lower in the chain) will do so as well.

If, on the basis of these inspection(s) and/or audit(s), (one or more) irregularities are detected at the Contractor or any Subcontractors (and, where applicable, other parties lower



in the chain), the costs of these inspections and/or audits are entirely at the expense of the Contractor.

The Contractor is only entitled to outsource work to Subcontractors of good report that are registered in the Trade Register (in the Netherlands or abroad), after written approval from the Client.

The Contractor is committed and undertakes towards the Client to impose the provisions of the previous paragraphs on and to record them in contracts with his Subcontractors (or, where applicable, other parties lower in the chain). In a similar manner as set out above, the Contractor is committed and undertakes towards the Client to stipulate, by way of perpetual clause, with all (subsequent) Subcontractors that they, in their turn, will impose the above provisions on all (subsequent) Subcontractors, as well as the obligation to notify all (subsequent) Subcontractors (or, where applicable, other parties lower in the chain) thereof. Each subsequent Subcontractor will accept the stipulation on behalf of and for the Client.

- 1.15.3. The Contractor undertakes to and guarantees that a Subcontractor at all times complies with the (safety) regulations of the Client as set out in the Specifications or if such is not the case which (safety) regulations must immediately be requested by the Contractor, including but not limited to:
- 1.15.3.1. 'Safety regulations' (Aviko QMS code 08-IN-0009);
 - 1.15.3.2. 'Prevention of product contamination after technical work' (Aviko QMS code 08-IN-0011);
 - 1.15.3.3. 'Declaration of compliance – Plastic food contact material' (10-RF-0107);
 - 1.15.3.4. 'Declaration of compliance – Plastic food contact material' (10-RF-0110);
 - 1.15.3.5. 'Declaration of compliance – Non-plastic food contact material' (10-RF-0108);
 - 1.15.3.6. 'House rules for visitors' production side' (Aviko QMS code 10-IN-0002).
- 1.15.4. The Contractor is responsible for compliance with the laws and regulations and (safety) regulations as referred to in Articles 1.15.1-1.15.4 by his Subcontractor(s) and all other persons present at the Work Site who are involved in the Delivery.

1.16. Penalty clause

- 1.16.1. The Contractor acknowledges that all periods and times agreed between the parties, including but not limited to the times for the warranty tests and the Completion Date, constitute an essential element of the Agreement and that non-compliance thereof entitles the Client, legally and without judicial intervention, to charge the Contractor flat-rate compensation of 0.5% of the Purchase Price per working day of delay, subject to a minimum of EUR 1,000 per working day delay and a maximum of 10% of the Purchase Price. The Contractor acknowledges that this fixed amount represents a reasonable indemnification of the foreseeable damage of the Client and that it can never be regarded as excessive. It



applies without affecting the Client's right to claim compensation for any higher damage he may actually suffer.

2. DESIGN AND MANUFACTURE

2.1. Time schedule

- 2.1.1. The Contractor must submit a time schedule for the design and manufacture of the System within the period specified in the Agreement, with the Agreement stating which parts of the System are to be included in this time schedule.
- 2.1.2. The Client may require that written reports be issued on the progress of the design and manufacture.

2.2. Design

- 2.2.1. The Contractor must provide the Client, timely in advance of the manufacture, with draft drawings and data concerning (the main parts of) the System for approval, together with a written explanation, so that any changes deemed necessary will not affect the Completion Date.
- 2.2.2. If the aforesaid drawings, data and explanations are incorrect or incomplete, or if they are not provided in time, the Client has the right to invoke the agreed penalty clause.

2.3. Manufacture

- 2.3.1. The Client has the right to conduct an assessment of and discuss with the Contractor the application and implementation of the safety aspects, prior to or during the FAT and SAT, as part of which the Client has the option to engage an external safety expert. This includes an extensive assessment of the information and user instructions provided.

3. TRANSPORT, INSTALLATION, WORK SITE AND COMMISSIONING

3.1. Transport

- 3.1.1. Transport to the place of Delivery forms an integral part of the Delivery.
- 3.1.2. After consultation between the Client and the Contractor, the available auxiliary materials can be used upon delivery of the System.

3.2. Installation

- 3.2.1. Time schedule
 - 3.2.1.1. The Contractor must submit a time schedule for the installation, commissioning and trial run of the System within the period specified in the Agreement, with the Agreement stating which parts of the System are to be included in this time schedule.
 - 3.2.1.2. The Contractor will, at times as desired by the Client, issue written reports on the progress of the installation and commissioning, on a regular basis.
- 3.2.2. Safety consultation and toolbox meeting
 - 3.2.2.1. Depending on the nature and complexity of the installation of the System, the Contractor must provide the HS coordinator with a report on the project progress and any related



high-risk activities. This can be achieved in the form of toolbox meeting or similar meetings, in order to be able to take the right action, in time. The frequency of this reporting will be coordinated between the Contractor and the HS coordinator.

- 3.2.2.2. The aforesaid meetings will take place as often as necessary to guarantee safety during the execution of the work, on a daily basis, where necessary. The initiative and responsibility for this lies with the Contractor.

3.2.3. Expert

- 3.2.3.1. From the start of installation until the Completion Date, the Contractor will appoint an expert who must have extensive knowledge of the System and/or Services, who will supervise the installation work and who, whenever necessary, will be available for among other things answering questions, solving problems and taking decisions that are required to make sure the installation work takes place correctly and in time.
- 3.2.3.2. The expert must be an authorised representative of the Contractor who is entitled to receive all communications and documents intended for the Contractor. The expert must be present at the arrival of each part of the Delivery.

3.2.4. Installation provisions

- 3.2.4.1. The installation of all parts of the System is performed under the responsibility of the expert. The drawings and data in connection with the installation, together with a written explanation, must be provided to the Client in time, before the start of the installation.
- 3.2.4.2. The Contractor is obliged to inform and familiarise the employees and third parties engaged by him to be assigned by the Client, with the System and the installation thereof.
- 3.2.4.3. Once the installation work has been completed, the Contractor will notify the Client thereof in writing, after which a joint assessment and inspection of the System will be performed in the form of a Site Acceptance Test (SAT). This includes, among other things, a performance assessment of the System and an assessment of the System in the area of possible health, safety or other risks, as part of which the Client can at all times be assisted by an external expert.
- 3.2.4.4. A protocol to be signed by both parties will be drawn up of the SAT, unless it appears that work still needs to be carried out. In the latter case, it will be recorded in writing which (additional) work is required. The aforesaid protocol will be signed by the parties after completion of the (additional) work and after inspection thereof.

3.3. Coherence between Delivery and other systems and work

- 3.3.1. The Contractor will take into account that, in places where the systems of different suppliers come together, slight deviations from the specifications in the drawing may occur, as a result of possible inaccuracies in the installation.

The Contractor is obliged to check the dimensions that are important to him and to adjust his System if such deviations occur. If the Contractor establishes that certain information regarding systems which his System must be connected to does not correspond with the information provided to him by the Client, he must consult the Client immediately. In the



event that such adjustments could in fairness have been prevented by the Contractor, the costs for such adjustments will be borne by the Contractor.

- 3.3.2. The Contractor is obliged to allow work to be carried out by the Client or third parties who are instructed by the Client to do this work, on the System or in the vicinity of the System set-up.

If the Contractor or his Subcontractor(s) must work together with third parties during the installation of the System, they will endeavour to work together properly, in such a way that the progress of the project, which the Delivery forms a part of, is not jeopardised.

Execution of work by the Contractor which third parties may be inconvenienced by must be discussed with the Client and those third parties in advance.

- 3.3.3. The Contractor will connect the System to systems supplied by the Client or third parties, all this as set out in the Agreement.

Connections to systems supplied by third parties must be made according to the guidelines of these third parties. The work referred to here, must be carried out in the presence and under the supervision of the supplier of the system concerned.

- 3.3.4. The Contractor must provide the necessary guidelines for the connection of systems supplied by third parties and he must be present during the connection process and exercise supervision.

- 3.3.5. The Contractor remains responsible for the correct operation of his System in coherence with systems connected by third parties. If during the manufacture, installation, trial run or warranty period the Contractor makes changes or replaces parts as a result of which the Client or third parties incur costs, these costs will also be borne by the Contractor.

3.4. Work Site

- 3.4.1. The Work Site, the dimensions, layout and accessibility of which are set out in the Agreement, is made available by the Client to the Contractor. Any costs involved are stated in the Agreement.

The Contractor must adequately inform himself of the details and the condition of the Work Site.

- 3.4.2. If any of the employees of the Contractor or his Subcontractors and any third party engaged by them, or any other person present on the Work Site involved in the Delivery, either fails to comply with the applicable laws and regulations, or, in the opinion of the Client, is incompetent or unsuitable, the Contractor is obliged to remove that person from the Work Site immediately at the request of the Client and have that person replaced.

- 3.4.3. In consultation with the Client, the Contractor is permitted to have his employees and third parties engaged by him and Subcontractors make use of the warehouses, workshops, washing facilities, laundry and changing rooms, toilets and canteen of the Client.

- 3.4.4. The Client will provide the Contractor with electricity, water and sewerage, at the locations to be specified by the Client and in accordance with the scope and method set out in the Agreement. All other provisions that are necessary for the normal execution of the work on the Work Site must be provided by the Contractor, subject to consultation with and approval from the Client.

- 3.4.5. The Client has the right to demand that the site huts, conveying plants, storage sites, etc. on the Work Site are moved. Compensation for costs incurred by the Contractor in connection



with this removal is payable only if the location to be vacated has been designated by the Client in writing before use.

If the Contractor makes use of scaffolding, tools, lifting equipment, etc. that belong to the Client and/or third parties working on behalf of the Client, this will be entirely at the risk of the Contractor. Only approved materials (including but not limited to electric hand tools conforming to the NEN 3140 standard) may be used at the location of the Client and they may only be used in combination with the Client's work permit system.

- 3.4.6. The Contractor must ensure that the Work Site assigned to him is kept clean, even if more than one supplier work in that area, as well as that debris and waste are removed to a location to be designated by the Client. The Contractor must pay special attention to the proper disposal of small parts of plastic, paper, wood and metal (nuts, bolts, ty-raps, gaskets, welding wire, pallets, labels, etc.), partly because food safety cannot be guaranteed in the event of product contamination. Machining work must be adequately screened so as to prevent parts entering the product stream. No glass objects may be handled or used within the production departments. If in the opinion of the Client, the Contractor fails to comply with this, the Client may have the Work Site cleaned by third parties at the expense of the Contractor.
- 3.4.7. The Contractor must immediately dispose of site huts, tools, bolts, nuts, etc. that are no longer necessary for the execution of his work.
- 3.4.8. At the Work Site, the Contractor may not store more material than is necessary in the opinion of the Client for the immediate execution of the Delivery.
- 3.4.9. The Client reserves the right to at all times inspect and check compliance by the Contractor with this Article 3.4 or have someone inspect and check compliance.

3.5. Commissioning

- 3.5.1. The commissioning of the System will immediately follow installation, but only if in the opinion of the Client, the System is in an operational and safe condition, in accordance with the Agreement.
- 3.5.2. The Client can at all times conduct inspections, or have inspections conducted, to ensure the proper implementation of the safety aspects and, where necessary, call upon an external expert who can inspect and check compliance with the relevant legislation.
- 3.5.3. The System is commissioned under the responsibility of the Contractor. The Contractor must make sufficient means available to ensure that the System can be commissioned as safely and as effectively as possible.
- 3.5.4. The Client can assist with the commissioning, in order to become familiar with the System as soon as possible. Prior to commissioning, the Contractor will organise one (1) or two (2) (consecutive) training days, which is at the Client's discretion, for staff of the Client. The Contractor must submit his plan for these training days to the Client for approval.
- 3.5.5. The Contractor will render his assistance if all or part of his System is to be used for the commissioning of other systems. The Client will make operating and maintenance staff available for this purpose free of charge and they will assist the Contractor.
- 3.5.6. If the commissioning is approved, the parties will sign a protocol unless it appears that work still needs to be carried out. In the latter case, it will be recorded in writing which (additional)



work is required. The aforesaid protocol will be signed by the parties after completion of the (additional) work and after inspection thereof by the Client.

4. TRIAL RUN AND COMPLETION

4.1. Trial run

- 4.1.1. After commissioning, the System will be subjected to a trial run, the duration and further description of which are incorporated in the Agreement. If the Agreement does not provide for the above and the parties have not entered into any subsequent written agreements on this subject, the duration of the trial run will not exceed fourteen (14) consecutive calendar days.
- 4.1.2. The start of the trial run is determined by the Client in writing, in consultation with the Contractor. The trial run is conducted with the assistance of the Client. Prior to the trial run, the Contractor will organise one (1) or two (2) (consecutive) training days, which is at the Client's discretion, for staff of the Client. The Contractor must submit his plan for these training days to the Client for approval.
- 4.1.3. During the trial run, the Contractor remains responsible for the correct operation of the System, even if the test run is conducted in conjunction with systems supplied by third parties. The Contractor must make sufficient staff available to ensure that the trial run can be conducted as safely and as effectively as possible.
- 4.1.4. The Client may issue instructions to the Contractor regarding the manner in which the test results must be recorded in measurement and test reports. These measurement and test results must be made available to the Client seven (7) calendar days before the Completion Date.
- 4.1.5. The Client may use his own equipment to inspect the Contractor's test installation.
- 4.1.6. During the trial run, the Contractor must demonstrate that the System meets the requirements and repair all defects at his expense as quickly as possible. The time of repair will be determined in mutual consultation.
- 4.1.7. If necessary, the trial run must, at the Client's discretion, continue day and night and include both the operation of the entire System and the independent components.
- 4.1.8. In the event of significant or frequent interruptions of the trial run, which is to be determined by the Client, the Client may demand that after the interruption has been rectified, the trial run is re-started from the beginning. Without prejudice to the provisions in this article, the trial



operation will, in any case, be continued until the System, in the opinion of the Client, meets the conditions of the trial run as stipulated in the Agreement.

- 4.1.9. In the event of an interruption of the trial run, the Contractor, at his expense, must take the necessary measures to protect the System.

4.2. Completion

- 4.2.1. After the end of a successful trial run, Completion takes place by the parties signing a protocol.
- 4.2.2. Upon Completion, the parties will, in the protocol referred to in Article 4.2.1 (i) record what improvements and work still need to be carried out, (ii) within which period they will be executed and (iii) what additional conditions will apply.

5. WARRANTY AND WARRANTY TESTS

5.1. Warranty

- 5.1.1. The Contractor guarantees the conformity, suitability, soundness, quality and proper operation of the System and Services and the Delivery in accordance with the Agreement and the legislation concerning quality, health, safety and the environment, for a period to be determined in the Agreement, starting from Completion as referred to in article 4.2, subject to a minimum of two (2) years.
- 5.1.2. Under the warranty, the Contractor is obliged to immediately and without costs for the Client repair all defects in the Delivery resulting from, among other things, faulty material, design errors, application of incorrect structures or errors made during the manufacture, installation, commissioning and trial run, by replacing the defective parts, if necessary. The Contractor, if so requested by the Client, must appoint an expert who supervises the immediate repair.
- 5.1.3. If the defect or repair fully or partially shuts down and/or delays the Client's operations, the Contractor is obliged to take all measures, including but not limited to shift work and overtime, in order to ensure that operations can be resumed or improved as soon as possible.
- 5.1.4. If parts must be replaced, adjusted or repaired and the Contractor cannot meet his obligation to start this work immediately, the Contractor is obliged to carry out a provisional adjustment or repair job or offer a work-around, so that operations can be resumed or improved as soon as possible. The Client subsequently grants the Contractor a reasonable period to complete the final adjustment or repair job.
- 5.1.5. If a final and immediate replacement, adjustment or repair job is indeed possible, but involves an interruption of operations or delay, all resulting costs and other losses, as a result of postponement of the final replacement, adjustment or repair job, will be at the expense of the Contractor. The Client, at his discretion, may opt to postpone the final replacement, adjustment or repair job to a time that is more convenient for the Client.
- 5.1.6. The warranty period will be suspended for the time that the System has not been able to run in accordance with the warranty obligations set out in the Specifications.
- 5.1.7. If the Contractor, within the framework of his warranty obligations, replaces parts by spare parts, the removed parts will become his property. These spare parts will be subject to a new warranty period of two (2) years.
- 5.1.8. Parts that have to be replaced remain at the disposal of the Client until the new parts are supplied, tested and approved, in any case, however, for as long as the undisturbed



commissioning of the System or the whole of the systems of which the System forms part of necessitates this, which is at the discretion of the Client.

- 5.1.9. The Client may demand that parts that have to be replaced remain in temporary use, as part of which the costs of installation and de-installation will be at the expense of the Contractor.
- 5.1.10. If in the opinion of the Client, the Contractor fails to remedy a defect properly or fails to do so in time, or if the repair of the defect cannot be delayed, the Client, after the Contractor has been given notice of default and the defect has not been remedied within ten (10) working days, is free to carry out the relevant corrective action at the expense of the Contractor.

5.2. Warranty tests

- 5.2.1. In order to demonstrate that the System meets the guaranteed values described in the Agreement, it will be subjected to warranty tests. The Agreement sets out which warranty tests will be conducted and how, at what time, by whom and under whose responsibility these warranty tests will be conducted.
- 5.2.2. If the warranty tests show that the guaranteed values are not achieved, the Contractor has the right to try to still achieve the guaranteed values by making improvements or changes. In that case, the warranty tests will have to be repeated under the same conditions. The resulting costs, including those of supervision, incurred by the Client or third parties appointed by him, with the exception of normal running costs, such as fuel and operating expenses, are at the expense of the Contractor.
- 5.2.3. If repeated warranty tests demonstrate that the guaranteed values are still not reached, the Client is entitled to invoke the agreed penalty clause against the Contractor.
- 5.2.4. The Client has the right to reject the System if for reasons for which the Contractor is responsible, the guaranteed values are exceeded or subceeded by deviations as specified in the Agreement, despite improvements made by the Contractor.

6. QUALITY PLAN, QUALITY ASSURANCE, SUPERVISION, INSPECTIONS, REJECTIONS

6.1. Quality plan

- 6.1.1. The Contractor will send to the Client a comprehensive and substantiated quality plan together with the Confirmation of Instruction.
- 6.1.2. The Client has the right to submit the quality plan to third parties for assessment.

6.2. Quality assurance

- 6.2.1. The Contractor must demonstrate that the agreed quality is achieved by him and how it is guaranteed during the warranty period.

6.3. Supervision and inspections

- 6.3.1. During the manufacture, installation, commissioning and trial run, the Client will be able to supervise compliance with all provisions of the Agreement.
- 6.3.2. The Contractor will grant access to the Client and/or third parties appointed by the Client to all plants, buildings and workshops where work is carried out on or before Delivery and provide the Client and/or said third parties with all auxiliary materials, data and workers, which the Client deems necessary as part of that supervision, free of charge. The Contractor will further give the Client and/or said third parties the opportunity to fully familiarise



themselves with the structure, manufacture, operation, quality, quality system and quality assurance of the System and all components thereof. The above also applies to the plants, buildings and workshops of Subcontractors.

6.4. Inspections

- 6.4.1. The quality plans, in addition to all inspections conducted by or on behalf of the Contractor, must further include the inspections as indicated by the Client and that are conducted by him or his authorised representative or which must be conducted in his presence. The Client or his authorised representative are further entitled to be present during all other inspections as indicated in the quality plan by the Contractor or by third parties.
- 6.4.2. The Contractor must draw up a time schedule for the inspections and will timely notify the Client in writing, at least four (4) working days in advance, of his intention to conduct inspections or of the possibility of conducting inspections. If the Contractor fails to comply with the above, as a result of which parts cannot be inspected to the satisfaction of the Client or his authorised representative in accordance with the regulations, the Client is entitled to reject these parts. Costs resulting from delays caused by the above are at the expense of the Contractor.
- 6.4.3. All costs of the inspections described in the quality plan, as well as of that part of the inspections required by any official body in order to obtain all required permits or certificates relating to the Delivery, are at the expense of the Contractor.
- 6.4.4. If during an inspection it appears that the Delivery does not meet the legislative requirements, a re-inspection will be conducted immediately after the Contractor has made the necessary improvements. The provisions of Articles 6.4.2. and 6.4.3. apply to any re-inspections.
- 6.4.5. The Contractor must clearly and permanently mark the goods to be inspected or checked.
- 6.4.6. The inspection does not discharge the Contractor from any warranty and/or liability obligations under the Agreement.

6.5. Rejections

- 6.5.1. During the manufacture, installation, commissioning, trial run and warranty periods, the Client has the right to reject System parts that do not meet the legislative requirements. In addition, the Client is entitled to refuse parts if the manufacture or the installation thereof has been assigned to a Subcontractor for which the Client's written approval as referred to in Article 1.4 has not been granted.
- 6.5.2. If the Client rejects System parts, they must be improved or replaced with new ones, which is at the Client's discretion, at the expense of the Contractor.
- 6.5.3. The improvement or replacement must be carried out within a period to be determined by the Client. If this improvement or replacement has not been carried out within that period, the Client is entitled to carry out the necessary improvements or replacements himself or have them carried out by third parties, which is at his discretion, at the expense of the Contractor. All costs, including installation and transport costs for the parts to be replaced, are at the expense of the Contractor. This also applies to costs of work and deliveries by third parties that are the result of this improvement or replacement.
- 6.5.4. Rejected parts that have to be replaced remain at the disposal of the Client until the new parts are supplied, tested and approved, yet in any case for as long as an undisturbed operation of the System necessitates this, which is at the discretion of the Client. The Client



can further demand that rejected parts are temporarily installed, the resulting costs of which have to be borne by the Contractor.

- 6.5.5. If the Client rejects the System in accordance with Article 5.2.4 it will from that moment on, be at the risk and expense of the Contractor again, insofar as the System, or parts thereof, were at the risk and expense of the Client before that time. In the event of said rejection, the Contractor, without delay, is obliged to repay the Client all payments made to the Contractor by or on behalf of the Client in connection with the Delivery, plus statutory interest, to be calculated from the moment on which the payments were made by the Client. In addition, the Contractor, at his expense, is obliged to de-install and dispose of the rejected System within the shortest possible time frame, on the understanding that de-installation is started at a time that causes the least disruption in the Client's operations, which is at the discretion of the Client. Said de-installation and removal must be carried out in consultation with the Client.

7. TIME AND PLACE OF DELIVERY, EXCEEDING THE COMPLETION PERIOD

7.1. Time and place of Delivery

- 7.1.1. The Contractor is obliged to comply with the agreed delivery times.
- 7.1.2. If the Contractor requires certain information, drawings, models or (auxiliary) materials to be provided by the Client in order to execute the Agreement, he must immediately notify the Client in writing of the date on which he must be in receipt of this in order to comply with the provisions of the Agreement.
- 7.1.3. The Delivery takes place in accordance with Incoterm 2010 'Delivered Duty Paid' (DDP). Place of Delivery is the address specified by the Client in the Agreement. If nothing is



stipulated in the Agreement or subsequently agreed between the parties in writing, Delivery will be made to the Work Site of the Client.

7.2. Exceeding the Completion Period

- 7.2.1. If due to circumstances on the part of the Contractor, the Completion Period is at risk of being exceeded, the Contractor will inform the Client thereof in writing as soon as possible.
- 7.2.2. The Contractor is obliged to take all measures (provisional provisions, increase in staff, shift work, overtime, etc.) deemed necessary by him and/or the Client to prevent the Delivery Time from being exceeded. The associated costs will be borne by the Contractor.

8. INVOICING, PAYMENT AND BANK GUARANTEES

8.1. Invoicing

- 8.1.1. Invoicing must take place as agreed between the parties in the Agreement, in Euros and in accordance with the Dutch Turnover Tax Act 1968.
- 8.1.2. The invoice of the Contractor must, in any case, state
 - 8.1.2.1. the complete order number of the Client and the associated project number, as well as the Client's address details;
 - 8.1.2.2. the Contractor's full legal name, address details (as listed with the Chamber of Commerce, registration number with the Chamber of Commerce, banking details, VAT number, bank name, account number, swift number, IBAN, BIC, type of code);
 - 8.1.2.3. the date on which the invoice was issued, a sequential number, the nature of the goods or services delivered, the quantity of the goods or the scope of the services delivered, the date on which the goods or services were delivered, or the date of an advance payment;
 - 8.1.2.4. the amount that the Contractor charges, exclusive of VAT, the VAT rate charged, the VAT amount; and
 - 8.1.2.5. the VAT number of Aviko B.V.
- 8.1.3. The Contractor's invoice must be sent to:

Aviko B.V.
T.a.v. de Financiële administratie
P.O. Box 8
7220 AA Steenderen
The Netherlands

invoice@aviko.nl
- 8.1.4. In the case of non-compliance or incomplete compliance with Articles 8.1.1 to 8.1.3, the Client reserves the right to return the invoice to the Contractor and to suspend his payment until remedied, as part of which the payment term is extended accordingly.

8.2. Payment

- 8.2.1. The Purchase Price can be paid by the Client in partial payments, subject to a payment term of sixty (60) calendar days per instalment. This payment term starts subject to prior receipt



by the Client of Confirmation of Instruction and of an invoice correctly drawn up and submitted in accordance with Article 8.1 for the relevant partial payment, insofar as the Client did not challenge the invoices (in part or in whole). Arrangements about partial payments, including their amounts and the moment of paying, must be included in the Agreement.

- 8.2.2. The Client has the right to suspend a payment, as long as the cause for his reasonable challenge, based on good grounds, has not been remedied by the Contractor.
- 8.2.3. Payment by the Client can never be considered as recognition by or waiver of rights of the Client with regard to the manner of performance of the Agreement by the Contractor.

8.3. Bank guarantee

- 8.3.1. If the Purchase Price amounts to more than EUR 100,000, the Client requires a prior bank guarantee from the Contractor for a guaranteed amount at least equalling the amount ensuing from the Agreement that should be paid by the Client up to the moment of Delivery, which is granted by a bank in favour of the Client for the period up to and including fourteen (14) calendar days after the date of Delivery. All costs associated with this bank guarantee will be borne by the Contractor.
- 8.3.2. If the Contractor, fails to fulfil the obligations under the Agreement as a result any circumstance, the Client will be entitled to fully or partially use the bank guarantee, on demand and without reservation.

9. TERMINATION OF THE AGREEMENT

9.1. Suspension and dissolution

- 9.1.1. The Client, at his discretion, has the right to either fully or partially suspend the performance of the Agreement and/or all related agreements between the parties, or to fully or partially dissolve the Agreement and/or all related agreements between the parties, at the expense of the Contractor, by means of a written notification to the Contractor, without judicial intervention, without discontinuance charge or compensation and with immediate effect, in the event of:
 - 9.1.1.1. a failure by the Contractor in the performance of (one of) his obligations under the Agreement or related agreements, which (i) cannot be remedied or (ii) is not remedied



within fifteen (15) working days of notification, unless the Contractor prepares a plan of action within that period, which plan is approved by the Client;

- 9.1.1.2. (application for/petition for) suspension of payment or liquidation of the Contractor, attachment of (part of) the Contractor's business property or assets, cessation or liquidation of, or transfer of the legal and/or actual control in the Contractor's business;
- 9.1.1.3. revocation of permits held by the Contractor that are necessary for the performance of the Agreement;
- 9.1.1.4. seizure of an important part of the assets of the Contractor; or
- 9.1.1.5. in the event of a garnishee order against the Contractor.

9.2. Claims due and payable

- 9.2.1. All claims the Client would have or acquire against the Contractor in the aforesaid cases will, insofar as legally permitted, be immediately due and payable in full.
- 9.2.2. In the event of partial dissolution, the Client, at his discretion and without prejudice to his right to invoke the agreed penalty clause against the Contractor, has the right to:
 - a. return to the Contractor, at his risk and expense, System parts that have been supplied, but which cannot (or no longer) be used and claim refunds for payments already made for the parts;
 - b. further execute the Agreement himself, at the risk and expense of the Contractor, or to have third parties execute the Agreement, possibly using goods/services already provided for by the Contractor.
- 9.2.3. The Contractor is obliged to immediately transfer back to the Client all goods and data in his custody, but which are the property of the Client, including all physical and electronic copies thereof, at least on the Client's demand. The Client has the right, at the Contractor's expense, to retrieve goods and data of the Client held by the Contractor, Subcontractor or another third party.

10. INSURANCE

10.1. Application

Article 10.2 applies to cases in which the Client takes out Construction All-Risks-insurance (hereinafter referred to as CAR insurance), in all other cases article 10.3 applies.

10.2. CAR insurance to be taken out by the Client

- 10.2.1. The Client, for himself, as well as for the Contractor and Subcontractors carrying out work on the Work Site, will take out CAR insurance that provides primary coverage to all said parties.



This CAR insurance will, in any case, provide cover up to and including the Completion Date, as described in the policy conditions.

The CAR insurance, under the policy conditions, must, in any case, cover:

- a. damage to the System or Services due to causes as specified in the policy;
- b. the risk of third-party liability up to the maximum per event for personal injury and/or property damage, as specified in the policy;
- c. damage to existing systems or other properties of the Client, up to the premium risk amount as specified in the policy.

The transport risk of the Delivery by the Contractor is not included in the CAR insurance and must be covered by the Contractor himself.

The insurance certificates that show that this risk is covered must be provided to the Client prior to the Confirmation of Instruction.

- 10.2.2. Damage to equipment, including but not limited to machines, site huts, sheds, the inventory thereof, tools and cranes owned by the Contractor is excluded from the CAR insurance. The Client does not accept any liability for this.
- 10.2.3. The contractual or non-contractual liability of the Contractor is not limited or modified by the fact that the Client has taken out CAR insurance. The policy excess of the CAR insurance is always at the expense of the Contractor, as well as all damage exceeding the sums insured as referred to in Article 10.2.1 (b) and (c) and all damage resulting from risks not covered by the insurance.
- 10.2.4. The quotations to be specified by the Contractor must not include premiums with regard to the insurance of those risks covered by the insurance policies taken out by the Client.
- 10.2.5. Possible payments of claims under the CAR insurance referred to in Article 10.2.1 will be made to the Client only, unless the Client authorises the insurance company to pay the Contractor directly.

10.3. Construction and/or installation insurance to be taken out by the Contractor

- 10.3.1. The Contractor must take out construction and/or installation insurance for his Delivery. This insurance must provide cover up to and including the Completion Date.
- 10.3.2. The cover for this construction and/or installation insurance must cover the full amount of the Purchase Price, including the value of any materials to be made available by the Client.
- 10.3.3. An agreement must be concluded with the insurers of the construction and/or installation insurance that provides for the waiver of the right of recourse by the insurers against the Client and its auxiliary persons and all those involved in systems to be supplied by third parties.
- 10.3.4. The Contractor guarantees that the insurer agrees that the construction and/or installation insurance can be continued by the Client once the transfer of risk has completed and



continuation is desirable with a view to the subsequent trial run of systems supplied by third-parties.

- 10.3.5. The Contractor must further take out liability insurance to cover his liability for personal injury and property damage.
- 10.3.6. The Client makes sure that the Contractor is co-insured under the relevant insurance policy/policies.
- 10.3.7. Prior to Delivery, the Contractor is obliged to provide policy documents and proof of timely premium payments pertaining to the aforesaid insurance policies to be taken out by him. The insurance certificates that show that this risk is covered must be provided to the Client prior to the Confirmation of Instruction.

10.4. Notice of a claim

- 10.4.1. After a loss event occurred, or after learning of a loss event, the Contractor and Subcontractor must inform the Client thereof by e-mail as soon as reasonably possible (riskmanagement@cosun.com).
- 10.4.2. The notice of a claim must contain a description of the nature, cause and the circumstances of the loss event, which description must be as comprehensive as possible, including, if relevant, clear photographic and/or video material.

11. MISCELLANEOUS

11.1. Waiver and means of redress

- 11.1.1. The Client's failure to enforce compliance with any right granted under the Agreement will not be regarded as a waiver of that right and does not affect the right of the Client to invoke this right. A waiver of right regarding non-compliance with the Agreement must be in writing



and does not constitute a waiver of rights with respect to previous or future breaches of contract.

- 11.1.2. The rights and means of redress of the Client under the Agreement are cumulative and apply without prejudice to other legal rights and/or means of redress of the Client.

11.2. Relationship between the parties

- 11.2.1. No provision of the Agreement is intended to set up a partnership, joint venture or other legal relationship that makes one party liable for the acts or omissions of the other or that gives a party the right to act as an agent for the other party.
- 11.2.2. Unless explicitly stated otherwise, no party has the authority to represent the other or to assume any obligations on behalf of that other party.

11.3. Survival

- 11.3.1. The full or partial expiry or termination of the Agreement does not affect the acquired rights or liabilities of a party.
- 11.3.2. The provisions of the Agreement which, with a view to their nature and scope are intended to remain in force, will continue to apply after expiry, dissolution, termination, lapse, completion or nullity of the Agreement. This includes, in any case, but without being restricted to Articles 1.1 (*Definitions*), 1.2 (*Application*), 1.3 (*General regulation*), 1.6 (*Liability and indemnity*), 1.7 (*Confidentiality*), 1.8 (*Intellectual Property Rights*), 1.9 (*Spare parts*), 1.11 (*Provision of information*), 5.1 (*Warranty*), 10 (*Insurance*), 11.1 (*Waiver and means of recourse*), 11.3 (*Survival*), 11.5 (*Audit*), 11.7 (*Applicable law*), 11.8 (*Disputes*) and 11.9 (*Nullity*).

11.4. Transfer

- 11.4.1. The Contractor, without prior written permission from the Client, will refrain from fully or partially transferring his rights and obligations under the Agreement to third parties.
- 11.4.2. The Client has the right to subject his permission to conditions.

11.5. Audit

- 11.5.1. The Client has the right to perform an audit or to have this performed by a third party at the Contractor and/or the Subcontractor(s).
- 11.5.2. The Contractor and/or the Subcontractor(s) must fully cooperate in the audit and provide the required and requested documentation and information immediately on request of the Client or his auditor.

11.6. Protection of personal data

11.6.1. Data provided by the Client

- 11.6.1.1. If within the framework of the performance of the Agreement, the Contractor processes personal data for the Client and acts as a Processor on behalf of the Client within the meaning of the General Data Protection Regulation ('GDPR'), the provisions of this Article 11.6 will also apply as a processing agreement within the meaning of the GDPR.



The Contractor will process personal data received only on the basis of written instructions from the Client and will not use personal data received for purposes other than for the performance of the Agreement.

- 11.6.1.2. The Contractor will take appropriate technical and organisational security measures to ensure personal data are treated confidentially and protected against loss or unlawful processing. The Client has the right to periodically check and evaluate these measures, at the Contractor's expense. After completion of the processing services, the Contractor will return all personal data to the Client or, at the Client's discretion, erase the data, unless storage is legally required. The Contractor ensures that persons authorised to process such personal data have committed themselves to observe confidentiality or are under an appropriate statutory obligation of confidentiality.
- 11.6.1.3. On the Client's demand, the Contractor will cooperate with the Client and make all information available that enables the Client to fulfil his own statutory obligations and to demonstrate this. The Contractor is not permitted to transfer personal data to another country without the prior written permission from the Client. Without prior written permission from the Client, the Contractor is not permitted to make use of processors or sub-processors. In the event that the Client does give permission, the Contractor will ensure that the same conditions as referred in this article are imposed on these processors or sub-processors.
- 11.6.1.4. The Contractor will assist the Client in ensuring compliance with his obligations under applicable data protection legislation in relation to: the security of processing, the notification of personal data breaches, the carrying out of data protection impact assessments and to prior consultation of the supervisory authority.

The Contractor guarantees that, insofar as applicable, his own statutory and contractual obligations under this article are complied with. The Contractor is liable towards the Client for damage, of whatever nature, arising from the careless processing of personal data by the Contractor within the framework of the execution of the Agreement. The Contractor (in his role as processor or otherwise) indemnifies the Client against any third-party claims that directly or indirectly result from the processing of personal data by the Contractor within the framework of his execution of the Agreement

- 11.6.1.5. Unless otherwise agreed by the parties, the processing may relate to the following categories of personal data and data subjects: identification data and contact details of contracting parties and employees of the Contractor (i.e. name, contact address, email address, etc.).

11.6.2. Data provided by the Contractor

- 11.6.2.1. The Contractor hereby acknowledges the possibility that in the framework of performing the Agreement, the Client will process contact details of the Contractor's representatives and employees as Controller and guarantees that the information referred to in Articles



13 and 14 of the GDPR will be made available to relevant data subjects (including making information available on behalf of the Client).

11.7. Applicable law

This Agreement is governed exclusively by Dutch law, excluding (i) any rule of conflict that would make another law applicable and (ii) the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 11 April 1980).

11.8. Disputes

- 11.8.1. Any disputes arising between the parties concerning the interpretation or execution of the Agreement or any ensuing agreements will be discussed by the parties in good faith, with a view to an amicable settlement through the escalation procedure described below.
- 11.8.2. The dispute will in the first instance be submitted to a core team consisting of members of both parties with the authority to sign. In the absence of an agreement within this core team within a period of ten (10) calendar days (or shorter, if desired or necessary), the most interested party must submit the dispute to the representative directors of both parties. In the absence of an agreement between the representative directors within a period of fourteen (14) calendar days from submission (or shorter, if desired or necessary), the dispute can only be settled by the competent courts in the district where the Contractor has his registered office, unless the parties agree to settle the dispute through arbitration or otherwise.
- 11.8.3. Neither the escalation procedure nor the submission of a dispute to the courts will suspend the Contractor's obligations. The suspension of the work by the Contractor gives the Client the right, after the Contractor has been given written notice of default and the Contractor does not remedy the breach, to have the work carried out by a third party at the risk and expense of the Contractor, subject to settlement the Client may be ordered to by the courts.

11.9. Nullity

The nullity of one or more provisions of the Agreement, or a part thereof does not affect the valid part of the Agreement. Both parties will replace the void provision(s) with (a) valid provision(s) that will be as close to the purport and objective of the agreement as possible.